

MAY 21 1976 9 10 AM

LEASE OF RAILROAD EQUIPMENT INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, entered into as of the 1st day of May, 1976, by and between MISSOURI PACIFIC RAILROAD COMPANY, whose address is 210 N. 13th Street, St. Louis, Missouri 63103, hereinafter referred to as "Lessor", and CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, an Indiana corporation, whose address is 210 N. 13th Street, St. Louis, Missouri 63103, hereinafter referred to as "Lessee", WITNESSETH:

R E C I T A L S:

The parties hereto have reached an understanding with respect to Lessor arranging for the construction of certain railroad cars (hereinafter called the "Cars") and the leasing of said Cars by Lessor to Lessee, and desire to set forth in writing their agreement with respect thereto.

NOW, THEREFORE, in consideration of the premises, the parties hereto agree:

1. Lease and Hire: Lessor hereby lets to Lessee and Lessee hereby hires from Lessor the Cars designated and described in Schedule "A" hereto.
2. Rentals: The Lessee agrees to pay to the Lessor as rental for each Car subject to this lease, 31 consecutive semiannual payments, payable on the first day of September and March in each year commencing with September 1976. The first rental payment shall be an amount equal to .025% of the Purchase Price of the Cars then subject to this lease for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date for each Car to September 1, 1976. The next 30 semiannual rental payments shall each be in an amount equal to 6.13915% of the Purchase Price of the Cars then subject to the Lease.
3. Net Lease: This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Cars from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Cars, the prohibition of or other restriction against the Lessee's use of all or any of the Cars, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Cars, except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

4. Term of Lease: The term of this Lease as to each Car shall begin on the date of the delivery to and acceptance by the Lessee of such Car and, subject to the provisions of Articles 8 and 14 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due pursuant to Article 2 hereof. The obligations of the Lessee hereunder shall survive the expiration of the term of this Lease.

5. Taxes: All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than (a) any United States federal income tax and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax payable by the Lessor in consequence of the receipt of payments provided for herein, and (b) the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein.

The Lessee will also pay promptly all impositions which may be imposed upon any Car or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Car free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Car; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor in such Cars or notify the Lessor of such

requirement and make such reports in such manner as shall be satisfactory to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Article 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

6. Annual Reports: On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 90 days from the date of this Lease, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Cars then leased hereunder, the amount, description and numbers of all Cars that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Cars as the Lessor may reasonably request and (b) stating that, in the case of all Cars repainted or repaired during the period covered by such statement, the numbers and the markings required by Article 7 hereof have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Cars and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

7. Identification Marks: The Lessee will cause each Car to be kept numbered with the identifying number and other required identifying marks set forth in Schedule "A" hereto. The Lessee will not place any such Car in operation, or exercise any control or dominion over the same, until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed.

The Lessee will not change the identifying number of any Car except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Car as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may allow the Cars to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Cars as permitted under this Lease.

8. Payment for Casualty Occurrences; Insurance: In the event that any Car shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of the Lease, the Lessee shall promptly and fully notify the Lessor with

respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor the rental payment due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Car as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Car, the rental for such Car shall cease to accrue, the term of this Lease as to such Car shall terminate and (except in the case of the loss, theft or complete destruction of such Car) the Lessor shall be entitled to recover possession of such Car.

The Casualty Value of each Car as of any rental payment date shall be that percentage of the Purchase Price of such Car as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1.	102.2451	17.	71.1517
2.	102.0340	18.	67.5854
3.	101.5347	19.	63.8908
4.	100.7786	20.	60.1010
5.	99.7911	21.	56.1834
6.	98.5692	22.	52.1642
7.	97.1246	23.	48.0106
8.	95.4550	24.	43.7485
9.	93.5686	25.	39.3451
10.	91.4669	26.	34.8263
11.	89.1549	27.	30.1587
12.	86.6379	28.	25.3681
13.	83.9176	29.	20.4212
14.	81.0031	30.	15.3432
15.	77.8930	31.	10.0000
16.	74.6003		

Except as hereinabove in this Article 8 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Car after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Cars at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable to the Lessor. Any net insurance proceeds as the result of insurance carried by the Lessee received by the Lessor in respect of Cars suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this Article 8. If the Lessor shall receive any such net insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this Article 8 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to a Car paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

9. Return of Cars: On termination of this Lease, Lessee will return the Cars to the Lessor at St. Louis, Missouri, or at such other point as Lessor and Lessee may then mutually agree upon; provided, however, that any Car loaded on or before the next to the last day of the Lease term may complete the loaded trip, and return of such Car to Lessor shall be made at the time such Car is released after unloading; and provided further, that each Car shall remain subject to the terms and conditions of this Lease until return thereof.

10. Improvements, Modifications and Alterations: The cost of any improvements, modifications, alterations or additions made to the leased Cars or Special Devices by or on order or at the direction of Lessee will be borne by Lessee.

11. Assignment - Use and Possession: Lessee will not assign, transfer, encumber or otherwise dispose of its leasehold interest under this Lease, the Cars or any part thereof, or sublet the Cars or change or permit to be changed or altered the lettering and/or numbering of the Cars, or any of them, without the consent of the Lessor in writing first obtained, except that Lessee may permit the use of the Cars by any subsidiary or affiliated railroad company or on lines of railroad other than Lessee's in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease. Lessee will not permit any encumbrances or liens, based upon any action or liability of Lessee, to be entered or levied upon any of the Cars.

12. Liability: Lessor shall not be liable for any loss of or damage to anything loaded in or on the Cars and makes no representation as to the suitability of the Cars for use in any particular service. Lessee agrees to indemnify and save harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and any expenses in connection therewith, including counsel fees, arising out of or as a result of the use and/or operation of the Cars during the term of this Lease, or by reason of any default by Lessee under this Lease.

13. Cleaning and Servicing: Lessee shall indemnify and hold harmless the Lessor from any claims made against Lessor, as Car Owner, resulting from any failure to clean and service the Cars before loading.

14. Defaults and Remedies: If Lessee shall default in the performance or observance of covenants herein and to be performed or observed by Lessee, and such default shall continue for 10 days after notice by Lessor to Lessee, or there shall be filed by or against Lessee a petition in bankruptcy or for reorganization under any bankruptcy law, or there shall be a receiver appointed of any part of Lessee's property or Lessee shall make a general assignment for the benefit of creditors, then and in any such events Lessor, at its election, may terminate this Lease and repossess the Cars, and this Lease shall thereupon become and be terminated, or Lessor may repossess the Cars and relet the same or any part thereof to others for such rent or compensation and upon such terms as it may see fit; and if a sufficient sum shall not be thus realized after repaying all expenses of retaking and reletting the Cars and collecting the rentals thereon

to satisfy amounts herein reserved or payable, Lessee agrees to satisfy and pay the deficiency from time to time upon demand. The obligation to pay such deficiency shall survive such termination and/or such retaking of the Cars to the end of the term of this Lease. Lessee shall, without expense to Lessor, assist Lessor in repossessing the Cars and shall for a reasonable time, if required by Lessor, permit storage of such Cars on trackage space owned or leased by Lessee, without cost to Lessor.

15. Obligations Suspended: In the event the performance, in Whole or in part, of the obligations (other than for payment of money) of either party under this Lease is hindered, interrupted, or prevented by war, strikes, lockouts, fire, acts of God, or by other similar or different acts of civil or military authorities, or by any cause beyond the reasonable control of the defaulting party, whether similar to the causes herein specified or not, the obligations of such party shall be suspended to the extent of and for the time that performance thereof is prevented or affected by such hindrance, interruption, or prevention, but due diligence shall be observed by such party in resuming performance of its obligations, after removal of the interrupting cause.

16. Compliance with Laws and Regulations: This Lease is subject to all Federal, state and other laws, rules, regulations and ordinances which may now or hereafter affect, change or modify the terms or conditions hereof or render unlawful the performance of any of its provisions. Lessee shall comply with all governmental laws, regulations and requirements and with the Code of Rules of the Association of American Railroads with respect to the use, maintenance, and operation of each Car subject to this Lease.

17. Renewal Option: Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, elect to extend the term of this Lease in respect of all but not fewer than all of the Cars then covered by this Lease, for an additional period of not less than one year commencing on the scheduled expiration of the original term or any extended term of this Lease, at a "Fair Market Rental" payable in semiannual payments on the semiannual anniversaries of the expiration of the original term or the preceding extended term. Additional successive renewals may be made on the same terms and conditions as set forth in this paragraph.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such Value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and Lessee may mutually agree upon, or

failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

18. Lessee's Rights: Lessee acknowledges and agrees that it has not obtained, and by the execution hereof it does not obtain, and by payments and performance hereunder it will not obtain, any title to the Cars nor any property right or interest, legal or equitable, therein, except solely as Lessee hereunder. Lessee shall keep the Cars free from any encumbrance or lien which may be equal to or superior to Lessor's rights or which may be a cloud upon or otherwise affect Lessor's title. This Lease is expressly subject to the title, rights, powers and remedies of the Trustee, Owner and/or Lessor under any Equipment Trust, Conditional Sale, or other financing arrangement of Lessor.

19. Prior Understandings: Prior understandings and agreements between the parties with respect to the Cars covered by this Lease are merged herein, and the rights of the parties in respect of such Cars shall be governed by this Lease.

20. Successors and Assigns: Covenants herein shall inure to or bind each party's successors and assigns.

21. Federal Income Taxes: The Lessor agrees to treat the Lessee as having purchased the property identified in Schedule A for the purpose of the federal income tax credit allowed by Section 38 of the Internal Revenue Code.

22. Notices: Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessee, at 210 North Thirteenth Street,  
St. Louis, Missouri 63103; and

(b) if to the Lessor, at 210 North Thirteenth Street,  
St. Louis, Missouri 63103

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

23. Severability, Effect and Modification of Lease: Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

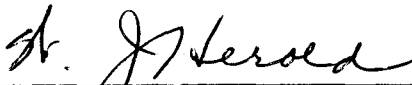
This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Cars and supersedes all other agreements, oral or written, with respect to the Cars. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

24. Execution: This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of May 1, 1976, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively the date or dates in the acknowledgments hereto annexed.

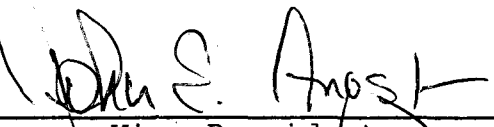
25. Law Governing: The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Missouri, provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties have duly executed this Lease the day and year first above written.

ATTEST:

By   
Assistant Secretary

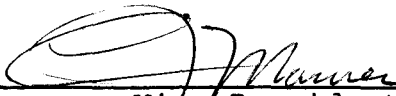
MISSOURI PACIFIC RAILROAD COMPANY  
(Lessor)

By   
Vice President

ATTEST:

By   
Assistant Secretary

CHICAGO & EASTERN ILLINOIS RAILROAD  
COMPANY (Lessee)

By   
Vice President



STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

On this 17th day of May, 1976, before me personally appeared John E. Angel, to me personally known, who, being by me duly sworn, says that he is Vice President of MISSOURI PACIFIC RAILROAD COMPANY, Lessor in the foregoing Lease of Railroad Equipment, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Loretta L. Edwards  
Notary Public

Commissioned within and for the County of St. Louis, Missouri, which adjoins the City of St. Louis, Missouri, where this act was performed.

My Commission expires: January 28, 1978

STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

On this 17th day of May, 1976, before me personally appeared C. J. Maurer, to me personally known, who, being by me duly sworn, says that he is Vice President of Chicago & Eastern Illinois Railroad Company, Lessee in the foregoing Lease of Railroad Equipment, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Loretta L. Edwards  
Notary Public

Commissioned within and for the County of St. Louis, Missouri, which adjoins the City of St. Louis, Missouri, where this act was performed.

My Commission expires: January 28, 1978

# LEASE OF RAILROAD EQUIPMENT

<u>Item</u>	<u>Quantity</u>	<u>Description</u>	<u>Total Cost Per Car</u>	<u>Numbers</u>
1	180	100-Ton Flats	\$30,951.00	CEI 819600-819779 both incl.
2	200	100-Ton Box W/LD	\$39,963.00	CEI 266350-266549 both incl.

The following is to be marked, plainly, distinctly, permanently and conspicuously on each side of the car in letters not less than one inch in height:

As to Item 1: MISSOURI PACIFIC RAILROAD EQUIPMENT TRUST, SERIES TT  
CHEMICAL BANK, TRUSTEE, OWNER & LESSOR

As to Item 2: MISSOURI PACIFIC RAILROAD EQUIPMENT TRUST, SERIES SS  
CHEMICAL BANK, TRUSTEE, OWNER & LESSOR